



February 12, 1999

SENATE BILL No. 424

DIGEST OF SB 424 (Updated February 11, 1999 3:34 pm - DI 51)

Citations Affected: IC 35-38; IC 35-50.

Synopsis: Sentencing. Specifies that if the state seeks to have a person convicted of an offense sentenced to: (1) an increased penalty because the person was previously convicted of the offense; (2) an additional fixed term of imprisonment as a habitual offender; (3) life imprisonment without parole as a habitual offender; or (4) an additional fixed term of imprisonment as a habitual controlled substance offender, the court alone must conduct the sentencing hearing. (Current law provides that if a person is convicted in a jury trial, the jury must reconvene for the sentencing hearing.)

Effective: July 1, 1999.

Bray, Alexa

January 13, 1999, read first time and referred to Committee on Judiciary.
February 11, 1999, reported favorably — Do Pass.

SB 424—LS 7561/DI 69+



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February 12, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 424

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) As used in this
3 chapter, "victim representative" means a person designated by a
4 sentencing court who is:

5 (1) a spouse, parent, child, sibling, or other relative of; or

6 (2) a person who has had a close personal relationship with;
7 the victim of a felony who is deceased, incapacitated, or less than
8 eighteen (18) years of age.

9 (b) Upon entering a conviction, the court shall set a date for
10 sentencing within thirty (30) days, unless for good cause shown an
11 extension is granted. If a presentence report is not required, the court
12 may sentence the defendant at the time the judgment of conviction is
13 entered. However, the court may not pronounce sentence at that time
14 without:

15 (1) inquiring as to whether an adjournment is desired by the
16 defendant; and

17 (2) informing the victim, if present, of a victim's right to make a

SB 424—LS 7561/DI 69+



statement concerning the crime and the sentence.

When an adjournment is requested, the defendant shall state its purpose and the court may allow a reasonable time for adjournment.

(c) If:

(1) the state in the manner prescribed by IC 35-34-1-2.5 sought an increased penalty by alleging that the person was previously convicted of the offense; and

(2) the person was convicted of the subsequent offense; ~~in a jury trial;~~

~~the jury shall reconvene for the sentencing hearing.~~ The person shall be sentenced to receive the increased penalty if ~~the jury (or the court, if the trial is to the court alone)~~ finds that the state has proved beyond a reasonable doubt that the person had a previous conviction for the offense.

(d) If the felony is nonsuspendible under IC 35-50-2-2, the judge shall order the defendant, if the defendant has previously been released on bail or recognizance, to be imprisoned in the county or local penal facility pending sentencing.

(e) Upon entering a conviction for a felony, the court shall designate a victim representative if the victim is deceased, incapacitated, or less than eighteen (18) years of age.

SECTION 2. IC 35-50-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.

(b) After a person has been convicted and sentenced for a felony committed after sentencing for a prior unrelated felony conviction, the person has accumulated two (2) prior unrelated felony convictions. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is one for which the person has been pardoned.

(c) ~~If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, The court alone shall~~ conduct the sentencing hearing under IC 35-38-1-3.

(d) A person is a habitual offender if ~~the jury (if the hearing is by jury) or the court (if the hearing is to the court alone)~~ finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.



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(e) The court shall sentence a person found to be a habitual criminal to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

SECTION 3. IC 35-50-2-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8.5. (a) The state may seek to have a person sentenced to life imprisonment without parole for any felony described in section 2(b)(4) of this chapter by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions described in section 2(b)(4) of this chapter.

(b) ~~If the person was convicted of the felony in a jury trial, the jury shall reconvene to hear evidence on the life imprisonment without parole allegation. If the person was convicted of the felony by trial to the court without a jury or if the judgment was entered to guilty plea,~~ The court alone shall hear evidence on the life imprisonment without parole allegation.

(c) A person is subject to life imprisonment without parole if ~~the jury (in a case tried by a jury) or the court (in a case tried by the court or on a judgment entered on a guilty plea)~~ finds that the state has proved beyond a reasonable doubt that the person has accumulated two (2) prior unrelated convictions for offenses described in section 2(b)(4) of this chapter.

(d) The court may sentence a person found to be subject to life imprisonment without parole under this section to life imprisonment without parole.

SECTION 4. IC 35-50-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) As used in this section:

(1) "Drug" means a drug or a controlled substance (as defined in IC 35-48-1).

(2) "Substance offense" means a Class A misdemeanor or a felony in which the possession, use, abuse, delivery, transportation, or manufacture of alcohol or drugs is a material element of the crime. The term includes an offense under IC 9-30-5 and an offense under IC 9-11-2 (before its repeal July 1, 1991).

(b) The state may seek to have a person sentenced as a habitual substance offender for any substance offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated substance offense convictions.

(c) After a person has been convicted and sentenced for a substance



1 offense committed after sentencing for a prior unrelated substance
 2 offense conviction, the person has accumulated two (2) prior unrelated
 3 substance offense convictions. However, a conviction does not count
 4 for purposes of this subsection if:

5 (1) it has been set aside; or

6 (2) it is a conviction for which the person has been pardoned.

7 (d) ~~If the person was convicted of the substance offense in a jury~~
 8 ~~trial, the jury shall reconvene for the sentencing hearing. If the trial was~~
 9 ~~to the court, or the judgment was entered on a guilty plea, The court~~
 10 ~~alone shall conduct the sentencing hearing under IC 35-38-1-3.~~

11 (e) A person is a habitual substance offender if ~~the jury (if the~~
 12 ~~hearing is by jury) or the court (if the hearing is to the court alone)~~
 13 finds that the state has proved beyond a reasonable doubt that the
 14 person had accumulated two (2) prior unrelated substance offense
 15 convictions.

16 (f) The court shall sentence a person found to be a habitual
 17 substance offender to an additional fixed term of at least three (3) years
 18 but not more than eight (8) years imprisonment, to be added to the term
 19 of imprisonment imposed under IC 35-50-2 or IC 35-50-3. If the court
 20 finds that three (3) years or more have elapsed since the date the person
 21 was discharged from probation, imprisonment, or parole (whichever is
 22 later) for the last prior unrelated substance offense conviction and the
 23 date the person committed the substance offense for which the person
 24 is being sentenced as a habitual substance offender, then the court may
 25 reduce the additional fixed term. However, the court may not reduce
 26 the additional fixed term to less than one (1) year.

27 (g) If a reduction of the additional year fixed term is authorized
 28 under subsection (f), the court may also consider the aggravating or
 29 mitigating circumstances in IC 35-38-1-7.1 to:

30 (1) decide the issue of granting a reduction; or

31 (2) determine the number of years, if any, to be subtracted, under
 32 subsection (f).

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 424, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 424 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 5.

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